

## **§ 2704.204**

### **§ 2704.204 Confidential financial information.**

Ordinarily, the net-worth and annual-receipts exhibits will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of such exhibits and believes there are legal grounds for withholding the information from disclosure may submit that portion of the exhibit directly to the administrative law judge in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the Secretary of Labor against whom the applicant seeks an award, but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures under the Freedom of Information Act (29 CFR part 2702).

### **§ 2704.205 Documentation of fees and expenses.**

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the underlying proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total

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amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

### **§ 2704.206 When an application may be filed.**

(a) An application may be filed whenever the applicant has prevailed in the underlying proceeding or in a significant and discrete substantive portion of that proceeding. An application may also be filed by a non-prevailing party when a demand by the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision. In no case may an application be filed later than 30 days after the Commission's final disposition of the underlying proceeding, or 30 days after issuance of a court judgment that is final and nonappealable in any Commission adjudication that has been appealed pursuant to section 106 of the Mine Act, 30 U.S.C. 816.

(b) If review or reconsideration is sought or taken of a decision on the merits as to which an applicant has prevailed or has been subjected to a demand from the Secretary substantially in excess of the decision of the Commission and unreasonable when compared to that decision, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this part, final disposition before the Commission means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final (pursuant to sections 105(d) and 113(d) of the Mine Act (30 U.S.C. 815(d) and 823(d)) and unappealable, both within the Commission and to the courts (pursuant to section 106(a) of the Mine Act (30 U.S.C. 816(a))).

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